IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 994 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAHA GUJARAT LABOUR UNION

Versus

STOVEC INDUSTRIES LTD.

Appearance:

MR MC BHATT for Petitioner

MR KM PATEL for Respondent No. 1

MR AGP for Respondent No. 3, 4

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 15/10/1999

ORAL JUDGEMENT

Heard Mr. Bhatt, the learned advocate for the petitioner Union and Mr. Patel for the respondent Co. and the learned Assistant Government Pleader for respondent No. 3 and 4. The facts of the present petition, in short, are as under:

1. According to the petitioner union, there are 25 employees whose details have been given in annexure "A". The employees as detailed in annexure "A" were employed by the second respondent since 1977-78 or 1978-79. The respondent Co. evolved the scheme of voluntary retirement and threatened the employees that the Company is likely to be closed and that under such threat, certain writings were obtained and they were made to resigne or to retire voluntarily under such threat. That the signatures of the employees were obtained by the officers of the second respondent under undue pressure and coercion. The petitioner union has raised industrial dispute by communication dated 2nd September, 1989 claiming reinstatement in service on original post with back wages and incidental benefits. The respondent No. 1 and 2 failed to consider the demand and, therefore, the dispute was raised in pursuance of the demand and conciliation proceedings were initiated by the third respondent and the parties were called by the third respondent for making reference under section 10 (1) of the Industrial Disputes Act, 1947 ("the ID Act" for short). Before the Conciliation Officer, the petitioner Union has submitted detail on 2nd December, 1989 in the form of representation. The union has also justified in detail that under undue influence and coercion, alleged writings were obtained from the said employees on some papers. Said writings were not permitted to read and they even could not understand the contents of those writings. The respondent No. 1 and 2 had also made their submissions. The said proceedings were numbered as IDR Complaint No. 3634 to 3658 of 1989. The petitioner union has received a letter dated 19th December, 1989 passed by the Assistant Commissioner of Labour, Ahmedabad annexure "E" to the petition. The conciliation officer has recorded the finding and has come to the conclusion that there exist no industrial dispute between the parties and, therefore, the question for making reference does not arise. The conciliation officer has, therefore, refused to make the reference under the provisions of the ID Act. The petitioner union has, therefore, challenged the said order passed by the conciliation officer before this Court by filing this petition. The petition was admitted by issuing rule thereon and making it returnable on 16th April, 1990. Thereafter, the respondent Co. has appeared by through their learned advocate Mr. K.M.Patel and has filed its affidavit in reply to the petition on 26th June, 1991. In its affidavit in reply, the respondent Co. has raised a contention about delay and has contended that the workmen have accepted the Voluntary Retirement Scheme ("the Scheme" for short) and that there was no pressure or force or coercion to sign

the papers as alleged. The allegations in that regard made by the petitioner union were denied by the respondent Co. while supporting the order passed by the Conciliation Officer under section 10(1) of the ID Act. Alongwith the affidavit in reply, order of the High court of Judicature at Bombay has been produced at page 39. The respondent Co. has produced the settlement dated 10.3.84 alongwith the affidavit in reply.

I have heard the learned advocates for the parties. Mr. Bhatt, the learned advocate for the petitioner union has submitted that there was genuine dispute between the employer and the employee. According to Mr. Bhatt, the Conciliation Officer has no power to decide or to adjudicate the dispute between the parties. He has to consider only prima facie case and not to adjudicate the issue which was raised by the union. He has further submitted that the law on that point has been settled by the decision of the apex court reported in AIR 1989 SC 1565. As regards delay, Mr. Bhatt has cited the decision of the apex court reported in 1999 (2) Scale 508 and the decision of Mahavirsinh reported in 1999 (2) CLR pg. 7. In both the cases, the Hon'ble apex court has decided that no period of limitation is prescribed for getting the reference made and it is not the function of the Court to prescribe the limitation where the legislature has, in its wisdom, thought it fit not to prescribe the period of limitation. It was further held that no reference to labour court could be thrown on the ground of delay alone and the Court can mould the relief by declining to grant some back wages. In case of Mahavirsinh, (supra), the apex court has held that merely because the dispute was belatedly raised, it does not mean that the dispute ceased to exist and the delay in raising the dispute is taken care by not awarding full back wages but only fifty percent for the entire period.

Mr. Patel, the learned advocate appearing for the respondent Co. has submitted that the demand is frivolous, belated and has also relied upon page 59 of the reply paragraph 2 and has further submitted that the conciliation officer has power to examine the matter in prima facie manner and the same has been done by the conciliation officer and has not decide any dispute between the parties. Mr. Patel has relied upon the decision of the apex court reported in AIR 1964 SC 1617, paragraph 6 on page 1621 and another decision reported in AIR 1976 page 1474 in respect of delay and has also relied upon the decision of this court reported in 1996 (2) GLH 149.

In reply to the submissions made by Mr. Patel, Mr. Bhatt has submitted that the delay was not required to be explained. What is relevant is the belated claim. Mr. Bhatt has submitted that the said dispute has been raised belatedly because of the misrepresentation made by the employer and the temptation which was given by the employer on the ground that the said company was likely to be closed down and, therefore, making such representation before the workmen and the workmen were not imagining the question of such misrepresentation of the employer and in fact, there was no voluntary retirement scheme. On the contrary, page 39, letter dated 31.3.1989 shows that the company has been merged with Stovech Ind. Ltd. and, therefore, the workers felt that the said respondent Co. has cheated the workers by making misrepresentation before the workers. According to the petitioner, the company had suppressed the material facts and, therefore, it was the duty of the conciliation officer to refer the dispute to the appropriate forum under the provisions of the ID Act.

I have considered the submissions of both the learned advocates. The Union has submitted justification to the conciliation officer on 2nd December, 1989 wherein the union has, in detail, submitted the facts as to how they were cheated and misrepresented by the employer. It was the specific allegation made by the union that the services of the workmen were, in fact, terminated under the guise of scheme and that the management has adopted unfair labour practices and has pressurized the workers to sign the papers though the company was continuing and new employees were employed and over time was also given to the new workers and that the work was carried out through the contractor. The conciliation officer, after considering the submissions of the employer and the employees, has passed an order like judgment of the competent authority and detailed reasons were given for coming to the impugned conclusion. Before the conciliation officer, the workers have also agreed to pay back the amount which has been accepted by the workers. The conciliation officer has come to the conclusion that the workers have voluntarily accepted the benefits under the said Scheme and have also given resignation voluntarily. Such finding of the conciliation officer is deciding the dispute which was raised by the petitioner union between the parties. The conciliation officer has no power or authority to record such finding as to whether the workmen have voluntarily submitted the resignation or not and whether the workmen have voluntarily accepted the amounts in question or not. Further, the conciliation officer has come to the

conclusion that because of voluntary resignation and accepting amount by the workmen, the relationship of master and servant has come to an end and, therefore, the said dispute cannot be considered to be the dispute as contemplated under the provisions of section 2(k) of the ID Act and the conciliation officer has taken decision not to refer the said dispute for adjudication to the labour court. The contention that the said dispute is frivolous dispute as has been raised by Mr. Patel before this Court has not been raised by the Co. before the conciliation officer. Before the Conciliation officer, it was contended that the petitioner union is not having sufficient membership for raising the dispute and this dispute cannot be covered by section 2(a) of the ID Act and also while accepting the amount tendered by the respondent Co., the workers are not entitled to raise the dispute in respect of resignation. The petitioner has given answer to these contentions and considering these submissions from both the sides, the Conciliation Officer has come to the conclusion which are the finding of fact and which is beyond the jurisdiction of the conciliation officer.

In similar situation, this Court in the decision reported in 1994 (1) GLR 891, has held that the adjudication is the function of the Courts and the tribunals constituted under the Act and it is not the function of the Government. It was further held that it cannot refuse to make the reference on the ground that in its opinion, relationship of master and servant is not established. It was also held that if there is serious dispute, triable issue and arguable case, the Government cannot come to the conclusion that there was no case or no prima facie case and the High Court can direct the Government to make a reference. In the said decision, it was held by the Division bench of this Court as under:

"The only consideration before the Government was whether the claims made in these cases were patently frivolous and only for this limited purpose, we will examine the merits of the dispute. "Patently frivolous dispute" would obviously be a dispute which does not require detailed investigation. In fact, the patentness or the frivolousness of the dispute would mean that the claim is so utterly untenable that it could not stand for a minute and there is no arguable case and there is no case for any consideration whatsoever. In the name of such prima facie explanation on merits to find out

whether the claim is patently frivolous or not, the Government cannot undertake detailed examination, investigation, appreciation of facts and application of law. It is clearly not the jurisdiction of the Government while exercising the administrative powers under Section 10 of the Industrial Disputes Act. That function of adjudication is that of the Courts and the Tribunals constituted for the purpose.

Under Sec. 10, case is clear that the Government has no power of adjudication, there is no question as to whether the Government has taken the right decision on merits or not. Once the Government has no jurisdiction to adjudicate, the Government cannot refuse to make the reference on the ground that in its opinion, meaning thereby in its adjudication, relation ship of master and servant is not established.

Both the rival contentions clearly indicate that there was a highly contested and disputed question which required adjudication by the judicial authority. By no stretch of imagination, the Government can say that the claim was patently frivolous. The very fact that both the sides had taken considerable pains to make lengthy submissions clearly showed that there was a serious dispute, triable issue and arguable case and the Government could not have under any circumstances, come to the conclusion that there was no case or no prima facie case. In fact, such a conclusion of the Government can be said to be unreasonable and perverse.

In the name of prima facie opinion, the Government has clearly usurped the role of a Tribunal and drawn its conclusion; that also in a most perfunctory and highly unsatisfactory manner. Such conclusion cannot stand for a moment.

In these cases, once the exercise was done and the Government was directed to reconsider the issue, the Government has in total disregard of the observations made in the earlier judgment, adjudicated upon the issue and that also in highly perfunctory manner not showing application of mind and merely confined its conclusions earlier reached. Almost four years have passed

after the demands are raised. In similar circumstances, the High Court and the Supreme Court in the cases cited above have issued directions for making reference instead of directing reconsideration by the Government. Following the same, we also direct the reference of the industrial dispute to be made by the Government."

This court has also considered the decision reported in 1991 (2) GLH 162 and also the decision of the apex court reported in AIR 1964 SC 1617. This Court has also considered the decision of the apex court reported in AIR 1989 SC page 1565. In the similar identical situation, said decision was given.

Therefore, in light of the decision of this court reported in 1994 (1) GLR 891, I am of the opinion that the decision of the conciliation officer there exists no dispute and therefore, it is not necessary to refer the said dispute for adjudication to the labour court is required to be quashed and set aside. The impugned decision of the conciliation officer is produced at annexure "E" page 17 of the petition. Mr. Patel has further contended that this Court has no power to direct the conciliation officer to refer the matter for adjudication. According to him, in case, if this court comes to the conclusion that the order of the conciliation officer is improper or invalid, this Court can issue direction for reconsideration of the matter . On the other hand, Mr.Bhatt has submitted that this court has power to issue mandamous against the conciliation officer for referring the dispute in view of the passage of ten years' time and now, it would not be just and proper to direct the conciliation officer to reconsider the matter for making reference and, therefore, he has submitted that the writ of mandamus must be issued against the third respondent for making reference.

I have considered the submissions of both the advocates. I have also considered the decision reported in 1994 (1) GLR 891 wherein this Court has while allowing the petition and setting aside the impugned order refusing to make reference, issued direction to the respondent authority to refer the demand to the appropriate forum under the ID Act within two months from the said date and the forum was directed to decide such reference six months from the date of the reference. Therefore, in view of passage of ten years' period,

according to my view, now there will be no purpose in issuing mere direction to reconsider against the third respondent. Therefore, in view of these peculiar facts and circumstances of the case, I am of the opinion that the order passed by the conciliation officer annexure "E" to the petition should be quashed and set aside while directing the third respondent to refer the dispute Annexure "B" to the petition dated 2.9.1989 to the appropriate forum in accordance with law within two months from the date of receipt of this order and to direct to the appropriate forum to decide such industrial dispute as expeditiously as possible, preferably within six months from the date of receipt of such reference. Accordingly, I pass the following order.

This petition is allowed. The impugned order passed by the conciliation officer (Annexure "E") is hereby quashed and set aside. The conciliation officer, respondent No.3 herein is directed to refer the industrial dispute Annexure "B" to the petition dated 2.9.1989 raised by the petitioner union to the appropriate forum under the Industrial Disputes Act for adjudication within two months from the date of receipt of these directions. The appropriate forum under the Industrial Dispute Act, 1947 shall hear and decide such dispute referred to it by the respondent No. 3 herein as expeditiously as possible, preferably within six months from the date of receipt of these directions. Rule is made absolute accordingly with no order as to costs.

Dt.15.10.1999. (H.K.Rathod,J.)

Vyas